

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

Appellants: Venturino et al.)	Examiner: Melanie Jo Hand
)	
Serial Number: 10/721,829)	Group Art Unit: 3761
)	
Filed: November 24, 2003)	Customer Number: 22827
)	
Confirmation No.: 4748)	Deposit Account: 04-1403
)	
Title: "Folded Absorbent Product and Method of Producing Same")	Attorney Docket No. KCX-669 (19587)
)	

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Appeals and interferences from the last decision of the Examiner.
2. ☐ **PRE-APPEAL BRIEF REQUEST FOR REVIEW:** Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reason(s) stated on the attached sheet(s) [No more than five (5) pages may be provided.]
3. ☐ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith (1 copy).
4. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).
5. ☒ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).
6. ☐ "Small entity" verified statement filed: [] herewith [] previously.

7. **FEE CALCULATION:**

	Fees
If box 1 above is X'd enter \$ 540.00	\$ <u>0.00</u>
If box 2 above is X'd enter \$ 0.00 (no fee)	\$ <u>0.00</u>
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PETITION is hereby made to extend the original due date of September 10, 2009, hereby made for an extension to cover the date this response is filed for which the requisite fee is enclosed (1 month \$130; 2 months \$490; 3 months \$1,110; 4 months \$1,730, 5 months \$2,350

\$ 0.00

SUBTOTAL: \$ 0.00

Less any previous extension fee paid since above original due date. - \$ 0.00

Less any previous fee paid for prior Notice of Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

Less any previous fee paid for submitting Brief on prior Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

SUBTOTAL: \$ 0.00

If "small entity" verified statement filed ☐ previously,
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TOTAL FEE ENCLOSED: \$ 0.00

- ☐ Fee enclosed.
- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☐ Charge to credit card (attach Credit Card Payment Form – PTO 2038)
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

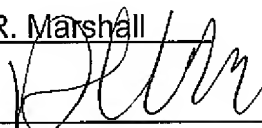
The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. shown in the heading hereof. This statement does not authorize charge of the issue fee in this case.

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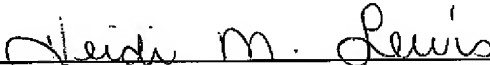
Signature: 

Date: September 10, 2009

I hereby certify that this correspondence and all attachments and any fee(s) are being electronically transmitted via the internet to the U.S. Patent and Trademark Office using the Electronic Patent Filing System on September 10, 2009.

Heidi M. Lewis

(Typed or printed name of person transmitting documents)


(Signature of person transmitting documents)

PATENT
ATTORNEY DOCKET NO: KCX-669 (19587)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Venturino et al.)	Examiner: Melanie Jo Hand
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Filed: November 24, 2003)	Deposit Account No: 04-1403
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Confirmation No: 4748)	Customer No: 22827
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Title: Folded Absorbent Product and)	
Method of Producing Same)	

REPLY BRIEF

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Honorable Commissioner:

In response to the Examiner's Answer of July 10, 2009, Applicants submit the following reply brief in accordance with 37 C.F.R. § 41.41:

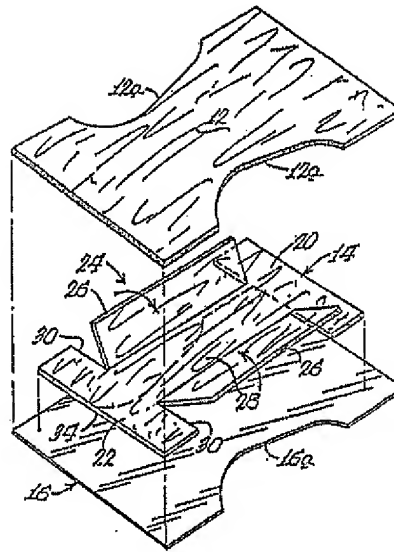
REPLY TO EXAMINER'S RESPONSE TO ARGUMENTS

The Examiner continues to state that the teachings of Mesek anticipate the presently claimed absorbent article, and specifically the absorbent structure of independent claim 1. Applicants respectfully disagree, and provide the following comments to further explain the differences between the teachings of Mesek and independent claim 1 of the present application.

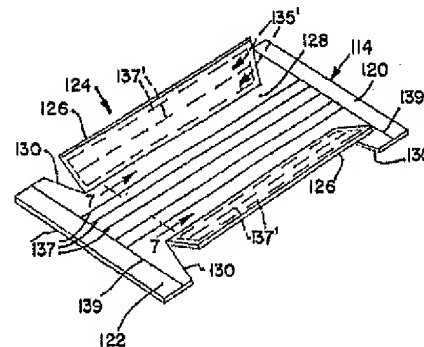
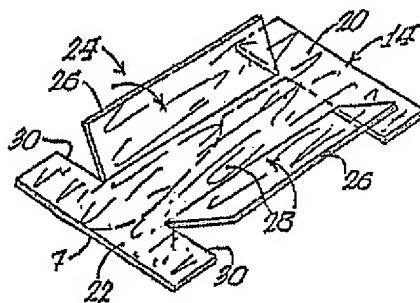
Mesek's Teachings

Mesek is directed to an absorbent unit for a disposable diaper, wherein the body or central portion of the batt is defined by multiple batt thickness for increased liquid holding. (Col. 3, lines 65-68). The batt is formed by cutting the longitudinal side edges of the batt to define side flaps which may be folded inwardly to provide multiple layers in the body or central portion of the batt. (Col. 4, lines 16-19). In one embodiment, the batt is cut about a third of its width dimension so that the side flaps of the batt and the medial section are generally of equal dimension. With this arrangement, the side flaps can be folded into overlapping relationship with one another to provide an absorbent unit with three layers in the central region thereof. (Col. 4, lines 20-26).

Fig. 2 of Mesek (reproduced below) shows the central portion 24 including a pair of side flap portions 26 at opposite sides of a medial portion 28. The side flap portions 26 are defined by lines of cutting 30 which extend inwardly from the side marginal edges of batt 14. (Col. 7, lines 30-34). The batt 14 is initially a rectangular member, with cutting lines 30 being parallel to one another and to the end portions of the batt. (Col. 7, lines 35-37).



The central portion 24 shown in Fig 2 is reproduced below without the presence of the top and bottom layers, along with the central portion shown in Figure 5 of Mesek:



As clearly shown, the batt 14 includes a central portion 24 including a pair of side flap portions 26 at opposite sides of a medial portion 28. As shown, these side flap portions 26 and the end portions 20,22 form a rectangular member when unfolded.

Independent Claim 1 of the Present Application

Independent claim 1 of the present application is generally directed to an absorbent article comprising an outer cover material; a liner; and an absorbent structure positioned between the outer cover material and the liner.

The absorbent structure includes a front portion, a rear portion, and a middle portion such that the middle portion positioned between the front portion and the rear

portion. The middle portion is narrower than the front portion. The front portion extends from a front edge of the absorbent structure to the narrower middle portion, defines an outermost lateral periphery, and has a width.

The absorbent structure further comprises a pair of opposing lateral flaps connected to the middle portion and folded at least onto the middle portion of the absorbent structure, each of the flaps, when in an unfolded state, extending beyond the outermost lateral periphery. The middle portion has a basis weight where the lateral flaps have been folded that is at least twice the basis weight of the front portion where the flaps are not located. Each of the flaps has a width adjacent to the middle portion that is from about 25% to 100% of the width of the middle portion. The absorbent structure defines a length such that the pair of opposing lateral flaps extends only a portion of the length of the absorbent structure adjacent to the middle portion.

Figure 7 shows an exemplary absorbent structured embodied by independent claim 1, and is reproduced below for the convenience of the Board:

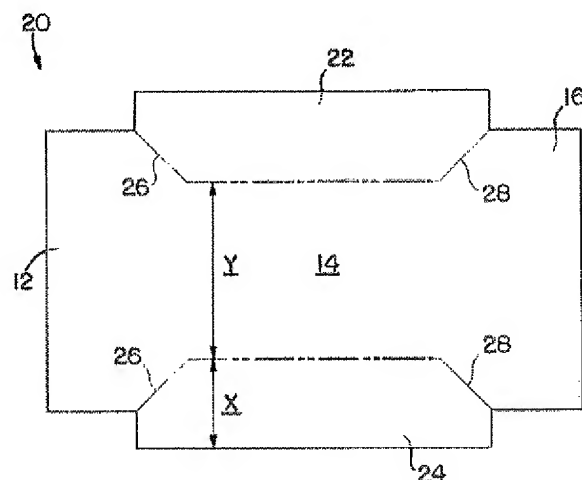


FIG. 7

As shown, the each of the flaps, when in an unfolded state, extending beyond the outermost lateral periphery of the front portion.

The Examiner Ignores Explicit Requirements of Independent Claim 1

The Examiner's Answer states, referring to the absorbent structure of independent claim 1, that the "front portion is not clearly defined and explicitly recited or defined in the disclosure." (Examiner's Answer, pg. 10). The Examiner then states:

"From that, the outermost lateral periphery will either only include the vertical side edges of the torso portion or will include those side edges and the side edges from the portion connecting the torso portion with the crotch region, i.e., the side edges created by slits 30." (referring to Mesek) "In that case, and in that connecting portion region, the flaps certainly extend beyond the outermost lateral periphery of the front portion because the outermost periphery starts and ends wherever the bounds of that front portion lie." (Examiner's Answer, pg. 11).

The Examiner's analysis errs in two distinct manners: (1) ignoring the boundaries of the front portion set forth by independent claim 1 and (2) ignoring the term "outermost" in independent claim 1.

First, the Examiner's position expressly states that the "front portion" of independent claim 1 "is not clearly defined and explicitly recited or defined." To the contrary, independent claim 1 expressly requires that (a) the middle portion be narrower than the front portion, and (b) the front portion extending from a front edge of the absorbent structure to the narrower middle portion. One of ordinary skill in the art would be able to sufficiently define the transition of the front portion to the middle portion. Clearly, the front portion extends up to the start of the flaps of the middle portion. Thus, the flaps define the middle portion and the front portion is defined from the flaps to the

front edge. Thus, the Examiner's analysis is completely incorrect and unfounded, and the resulting rejection cannot be sustained.

Second, even if one ignores the boundaries of the front portion set forth in independent claim 1, the Examiner's analysis incorrectly ignores the term "outermost" describing the lateral periphery of the front portion. Independent claim 1 states that the front portion defines an outermost lateral periphery. The lateral periphery is clearly the side edges defined by the front portion of the absorbent structure, which are highlighted by the bold lines in the reproduced Figure 7 shown below for the convenience of the Examiner:

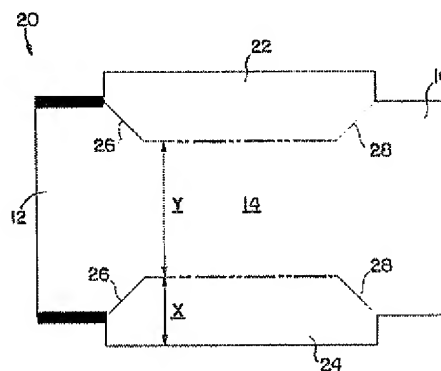


FIG. 7

These highlighted side edges define the lateral periphery of the front portion. Independent claim 1 requires that each of the opposing lateral flaps connected to the middle portion, when in an unfolded state, extend beyond the outermost lateral periphery. The term "outermost" further defines the extent to which the flaps extend – not just beyond the lateral periphery of the front portion, but rather beyond the outermost lateral periphery of the front portion. Thus, even if the front portion is defined to include a portion of the middle portion (i.e., including the slits 26 and the folds of the middle portion), then the outermost lateral periphery of the front portion would still be

the portion of the lateral periphery that is farthest away from the lateral axis of the absorbent structure. Thus, even if the Examiner's interpretation of the front portion from the Examiner's Answer is considered, Mesek still fails to teach that the opposing lateral flaps connected to the middle portion, when in an unfolded state, extend beyond the outermost lateral periphery. As such, Applicants respectfully submit that the Examiner erred in rejecting independent claim 1.

Differences between Mesek and Independent Claim 1

When properly construed, Mesek completely fails to teach or disclose that each of the flaps, when in an unfolded state, extend beyond the width of the front portion, as required by independent claim 1. The Office Action fails to address this limitation, except to state that Mesek discloses "each of the flaps 26, when in an unfolded state, extending beyond the width of the front portion." (Office Action, pg. 2). Contrary to this assertion in the Office Action, Mesek simply does not disclose any such configuration. In fact, Mesek specifically states that the batt is initially (i.e., when in an unfolded state) a rectangular member. Thus, the flaps do not, and could not, extend beyond the outermost lateral periphery of the front portion. Applicants respectfully submit that independent claim 1 is not anticipated by Mesek. As such, Applicants respectfully submit that independent claim 1 is patentable over Mesek.

Furthermore, the absorbent structure as defined in claim 1 provides various benefits and advantages over the absorbent structure disclosed in Mesek. For instance, by having the flaps wider than the outermost lateral periphery of the front portion when unfolded, the flaps can be easily engaged during production of the absorbent article and folded over onto the middle portion of the absorbent structure. In

particular, since the flaps are wider than the front portion, stationary folding guides can be used to easily find and fold the flaps. Due to the width of the flaps, it may not be necessary to score the web prior to folding the flaps, although score lines may be formed on the absorbent web where the flaps are to be folded if desired. (Application, Paragraph 74).

On the other hand, Mesek discloses the use of a complicated folding device shown in Figs. 10 and 11, such as a time registered cam. The presently claimed configuration eliminates the need for this device because the flaps can be easily folded using a stationary folding device.

Mesek also fails to disclose or even recognize several other advantages of the embodiment claimed by claim 1. For example, when each of the flaps extend beyond the width of the front portion when unfolded, the middle portion can be larger relative to the front portion after folding, than if each of the flaps did not extend beyond the front portion. The result of a relatively larger middle portion enables the absorbent to provide greater leakage protection in the middle area, resulting in an improved absorbent article. The Office Action apparently does not recognize that this advantage allows the resulting folded middle area to be relatively larger than it would be if the flaps did not extend beyond the width of the front portion.

In summary, it is believed that the claims as currently pending patentably define over the prior art of record and are in complete condition for allowance. For the reasons stated above, it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be reversed by the Board.

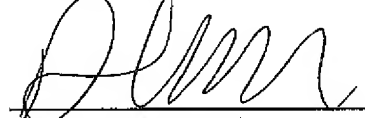
Reply Brief
Sept. 10, 2009

Please charge any additional fees required by this Appeal Brief to Deposit

Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.

A handwritten signature in black ink, appearing to read 'A. Marshall', written over a horizontal line.

Alan R. Marshall

Registration No. 56,405

Sept. 10, 2009

Date

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